STATE OF MICHIGAN

COURT OF APPEALS

DR. CHARLES HANDLEY, d/b/a DR. HANDLEY AND ASSOCIATES,

Plaintiff-Appellant,

v

JOSEPH SEXTON and SHERRY SEXTON,

Defendants-Counter-Plaintiffs/
Third-Party Plaintiffs-Appellees,

and

AMERISURE COMPANY and HRM CLAIM MANAGEMENT,

Third-Party Defendants.

UNPUBLISHED
January 26, 2001

No. 216156
Lapeer Circuit Court
LC No. 96-023500-CK

Before: Smolenski, P.J., and Doctoroff and Wilder, JJ.

PER CURIAM.

This case involves a billing dispute between plaintiff, a chiropractor, and defendants, the patients. Plaintiff sued defendants for breach of contract, unjust enrichment, and quantum meruit for unpaid chiropractic services performed on defendants' minor son after a car accident. Defendants countersued, alleging fraud, abuse of process, and violation of the Michigan Consumer Protection Act (MCPA), MCL 445.901; MSA 19.418(1).[1] Following a bench trial, the trial court found no cause of action on plaintiff's claims. The trial court also found no cause

[1] Defendants also filed a third-party complaint against Amerisure Company, their no-fault automobile insurance carrier, and HRM Claim Management, Inc., Joseph Sexton's medical insurer, for indemnification of payments to plaintiff for services rendered. The trial court subsequently granted HRM's and Amerisure's motions for summary disposition on the basis that the patient's last treatment was in September 1994, no request for benefits was filed by defendants until 1996, and the explanation of benefits stated that no lawsuits can be brought to cover benefits more than one year from the date of proof of claim. Defendants have not appealed the trial court's ruling and Amerisure and HRM are not parties to this appeal.

of action on defendants' fraud and abuse of process counterclaims, but awarded a judgment in favor of defendants on their MCPA claim. Plaintiff appeals by right and we affirm.

Plaintiff first contends that the judgment should be set aside because it was based on the perjured testimony of defendant Sherry Sexton. However, we are unable to find any evidence in the record to substantiate plaintiff's allegation of perjury. Rather, we interpret defendant's argument as a challenge to the trial court's finding that Sexton did not discover the existence of any outstanding bills from plaintiff until 1996. To this end, we find no clear error in the trial court's finding. MCR 2.613(C); *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). Sexton testified that she first became aware that defendants had an outstanding bill with plaintiff for her son's medical treatments in 1996. She further testified that she did not believe she owed plaintiff any money because she had all the check stubs verifying the bills paid by the insurance company and when she contacted the insurance company, she was informed that plaintiff had been paid everything he was owed. This Court affords great deference to the trial court's determination of credibility. *Sullivan Industries, Inc v Double Seal Glass Co*, 192 Mich App 333, 349; 480 NW2d 623 (1991). The trial court reasonably found on the entire record that Sexton's testimony that she was unaware of any outstanding bills until 1996 was credible. Thus, the trial court's finding was not clearly erroneous. *Snyder, supra.*

Plaintiff next argues that the trial court erred by admitting defense exhibit 6, a summary of plaintiff's billings and payments received, pursuant to MRE 1006 because it was not prepared by a qualified individual, and because it was misleading and unduly prejudicial under MRE 403. We disagree.

To oppose on appeal the admission of evidence at trial, a party must timely object at trial and specify the same ground for objection that it asserts on appeal. MRE 103(a)(1); *Anton v State Farm Mutual Automobile Ins Co*, 238 Mich App 673, 688; 607 NW2d 123 (1999). Here, defendant failed to timely object to the admission of the bill summary at trial on the grounds that it was not prepared by a qualified individual or that it was misleading and thus prejudicial. Rather, plaintiff merely objected to some highlighting on the exhibit and then, after closely examining the summary during a break in the proceeding, stated that it appeared to be factually accurate. Therefore, because the substantial rights of plaintiff were not affected, this issue was not preserved for appeal. MRE 103(a)(1); *Anton, supra*.

In any event, we are not convinced that admission of the exhibit was improper. As noted above, plaintiff reviewed the chart and admitted on the record that it was factually accurate. See *Northwest Acceptance Corp v Almont Gravel, Inc*, 162 Mich App 294, 306; 412 NW2d 719 (1987). Further, given the large number of bills issued in this case (both incorrect and corrected bills), the exhibit was helpful in illustrating the billing charges and the amounts paid, and did not grossly confuse the issue whether plaintiff was fully paid by defendants' insurers for services rendered. Plaintiff was claiming unjust enrichment; thus, whether he received payment from the insurance companies, and how much, was highly probative on this issue. The summary was neither misleading nor highly prejudicial, and the trial court did not abuse its discretion in admitting the evidence.

Lastly, plaintiff argues that defense counsel's verbal and nonverbal coaching of the witnesses requires reversal. We disagree. Control of trial proceedings is within the trial court's

discretion. *People v Jeske*, 128 Mich App 596, 602; 341 NW2d 778 (1983). The record reveals that when defense counsel interrupted plaintiff's counsel's questioning of Sexton on cross-examination, the trial court immediately confronted the issue by instructing defense counsel to address any inconsistencies or errors in the testimony on redirect examination. Further, after reviewing Sexton's later testimony, it is clear that defense counsel's interruption did not influence her testimony. Likewise, when plaintiff again objected to defense counsel's alleged coaching of the witness, the trial court promptly instructed counsel not to coach his client.[2] Accordingly, we find no error.

We deny defendants' request for sanctions on appeal pursuant to MCR 7.216(C). Although we find no merit to the issues raised on appeal, the matter was not so lacking in merit as to be vexatious.

Affirmed.

/s/ Michael R. Smolenski
/s/ Martin M. Doctoroff
/s/ Kurtis T. Wilder

[2] The record is unclear whether defense counsel was in fact coaching the witness when plaintiff lodged the complaint and defense counsel took exception to the allegation.